

TAB 28

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Judith C. Waterer      HIGHLY CONFIDENTIAL      November 28, 2005  
Cleveland, OH

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| <p style="text-align: right;">30</p> <p>1      A. Yes.</p> <p>2      Q. What were your job responsibilities as a</p> <p>3 program development manager?</p> <p>4      A. They kind of evolved over time. It was</p> <p>5 a created position because Ed recognized that</p> <p>6 corporately there was an increasing focus on</p> <p>7 generics, and they did not have anybody with any</p> <p>8 significant generic experience.</p> <p>9      Initially the concept was that I was to</p> <p>10 develop sales programs for the field to go out and</p> <p>11 offer to customers. It became apparent fairly</p> <p>12 quickly that that's not the way the industry works.</p> <p>13      So the position basically evolved into -</p> <p>14 - in terms of responsibilities and description,</p> <p>15 while the title didn't change, I would say that it</p> <p>16 became product management for the entire multisource</p> <p>17 line.</p> <p>18      Q. As part of this product management for</p> <p>19 the entire multisource line, what specifically did</p> <p>20 that entail? For example, would there be</p> <p>21 responsibility relative to pricing?</p> <p>22      A. Yes.</p>                            | <p style="text-align: right;">32</p> <p>1      A. Yes.</p> <p>2      Q. And was John Powers the head of the</p> <p>3 contracts department during this time period?</p> <p>4      A. Yes.</p> <p>5      Q. Were there any other individuals in the</p> <p>6 contracts department that you interacted with?</p> <p>7      A. To a small degree, yes. Some of the bid</p> <p>8 coordinators, perhaps, but my main contact was John.</p> <p>9      Q. What about interaction with the sales</p> <p>10 departments, and when I say that, I mean the</p> <p>11 national account managers or the national account</p> <p>12 directors with respect to the Roxane multisource</p> <p>13 product line, did you have interaction with them?</p> <p>14      A. Initially when I got there, they didn't</p> <p>15 really exist. My interaction was predominantly with</p> <p>16 the sales management.</p> <p>17      Q. And when you started in '96, who made up</p> <p>18 the sales management at Roxane?</p> <p>19      A. I believe there were two sales groups.</p> <p>20 One was headed by Jerry Hart, and that was the</p> <p>21 larger group that had the majority of products. The</p> <p>22 other group was headed by Jerry Sincich, and he was</p> |
| <p style="text-align: right;">31</p> <p>1      Q. What did you do with respect to pricing?</p> <p>2      A. At that point I mostly consulted with</p> <p>3 contracts. Contracts had the ultimate</p> <p>4 responsibility for setting -- with pricing, I'm</p> <p>5 talking bid pricing. Contracts determined what the</p> <p>6 pricing was going to be, but we consulted about it.</p> <p>7      Other pricing would be on new launch</p> <p>8 products. I would be responsible for proposing the</p> <p>9 pricing the list prices that would go out with.</p> <p>10      Q. This position in product management that</p> <p>11 you started out with at Roxane in 1996, was that</p> <p>12 focused only upon multisource products?</p> <p>13      A. Yes -- no. It was focused on the</p> <p>14 multisource product line within which there may have</p> <p>15 been some sole source generics or sole source</p> <p>16 products.</p> <p>17      Q. What were some of the sole source</p> <p>18 generics that you recall?</p> <p>19      A. I would probably have to have a list and</p> <p>20 look at them.</p> <p>21      Q. Did you interact with the contract</p> <p>22 department during this time period?</p> | <p style="text-align: right;">33</p> <p>1 responsible for addiction treatment center, had a</p> <p>2 much smaller group.</p> <p>3      Q. And did Jerry Hart have sales</p> <p>4 representatives working beneath him?</p> <p>5      A. Yes.</p> <p>6      Q. What about Jerry Sincich, did he also</p> <p>7 have sales reps?</p> <p>8      A. Yes.</p> <p>9      Q. That sales force eventually evolved to</p> <p>10 the point where Roxane had national account</p> <p>11 managers; is that right?</p> <p>12      A. Yes.</p> <p>13      Q. Do you recall when that was?</p> <p>14      A. It evolved over time, so I don't</p> <p>15 remember the specifics.</p> <p>16      Q. Do you recall who some of the national</p> <p>17 account managers were that you had interactions</p> <p>18 with?</p> <p>19      A. From way back then? I think early on</p> <p>20 Steve Snyder, but he was hired in.</p> <p>21      Q. I'm sorry. Did you say he was hired</p> <p>22 after you?</p>                                                                                                                                                                                                                                                             |

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| <p style="text-align: right;">34</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. Chris Boneham. From the early time</p> <p>4 those are the two that I'm remembering.</p> <p>5 Q. If you expand the time period out?</p> <p>6 A. Currently?</p> <p>7 MR. COVAL: To where?</p> <p>8 Q. Who do you recall through 2001 time</p> <p>9 period?</p> <p>10 A. I can't put a finger on who was hired</p> <p>11 what date and where they were.</p> <p>12 Q. Why don't you give me your recollection</p> <p>13 of who you do recall?</p> <p>14 A. Having ever been a national account</p> <p>15 representative?</p> <p>16 Q. Yes.</p> <p>17 You mentioned Steve Snyder and Chris</p> <p>18 Boneham.</p> <p>19 A. Debbie Kutner, Penny Hawthorne, Mike</p> <p>20 Doan, Anthony Tavalarro, Linda Antonini. I'm sure</p> <p>21 I'm missing someone.</p> <p>22 Q. Was Dawn Gordon a national account</p>                          | <p style="text-align: right;">36</p> <p>1 Q. Was Lesli Paoletti hired by you?</p> <p>2 A. I gave her a position that was a</p> <p>3 promotion. I did not initially hire her into the</p> <p>4 company.</p> <p>5 Q. Was she with Roxane when you came in in</p> <p>6 1996?</p> <p>7 A. I believe so.</p> <p>8 Q. We have gone through pricing</p> <p>9 responsibilities, sales force management</p> <p>10 interactions.</p> <p>11 What other types of responsibilities did</p> <p>12 you have during this 1996 through 2000 time period</p> <p>13 when you were a program development manager?</p> <p>14 A. I think that pretty much sums it up.</p> <p>15 Q. Did you have any price reporting</p> <p>16 responsibilities?</p> <p>17 A. The price reporting was done by sales</p> <p>18 management. That might have evolved into the sales</p> <p>19 management. Very early on I believe that was</p> <p>20 handled by the advertising coordinator.</p> <p>21 Q. Was there ever a point in time when your</p> <p>22 department was reporting like AWP or average</p>                                                            |
| <p style="text-align: right;">35</p> <p>1 manager?</p> <p>2 A. Yes.</p> <p>3 Q. Was she there when you were brought in</p> <p>4 in 1996?</p> <p>5 A. I don't recall.</p> <p>6 Q. What kinds of interactions did you have</p> <p>7 with the sales force?</p> <p>8 A. I would present product information and</p> <p>9 launch plans to them at the national sales meetings.</p> <p>10 If they had questions or wanted exception pricing,</p> <p>11 they would contact me and plead their case, if you</p> <p>12 will.</p> <p>13 If I needed competitive information, I</p> <p>14 might call a few of them and ask them to gather</p> <p>15 specific information on a product. I think that's</p> <p>16 pretty much it.</p> <p>17 Q. So you would communicate by telephone</p> <p>18 occasionally?</p> <p>19 A. Yes.</p> <p>20 Q. Would you also communicate by E-mail at</p> <p>21 that point?</p> <p>22 A. Yes.</p> | <p style="text-align: right;">37</p> <p>1 wholesale price to any of the reporting entities</p> <p>2 like First Data?</p> <p>3 A. The actual memos did not come from our</p> <p>4 department or I should say weren't signed by our</p> <p>5 department. They were signed by national accounts</p> <p>6 or trade relations.</p> <p>7 Q. Did your department have a role in</p> <p>8 determining what the input was for those reports?</p> <p>9 A. Yes.</p> <p>10 Q. What role did your department play?</p> <p>11 A. We proposed the pricing.</p> <p>12 Q. And specifically as to AWP, what was the</p> <p>13 process that was followed to determine AWP for</p> <p>14 various products?</p> <p>15 A. On all of the new launch products, we</p> <p>16 attempted -- we used a general industry rule of</p> <p>17 thumb of setting the generic AWP at 10 percent below</p> <p>18 the brand AWP.</p> <p>19 On the existing line there had been</p> <p>20 previously no rhyme or reason that I could</p> <p>21 determine. So when opportunities came up to adjust</p> <p>22 pricing, we would attempt to bring pricing into line</p> |

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| <p style="text-align: right;">166</p> <p>1 what their use is and what they will commit to in</p> <p>2 terms of conversion and what we need to do to meet</p> <p>3 the competitive situation."</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. You say, "We can do something based on</p> <p>7 meeting competition."</p> <p>8 What is it that Roxane can do in this</p> <p>9 instance with respect to meeting competition?</p> <p>10 MR. COVAL: Objection. Form.</p> <p>11 A. Our understanding at the time was that</p> <p>12 when you have a sole source generic, you have to</p> <p>13 offer the same price to all like customers. The</p> <p>14 only exception to that would be if you had to meet a</p> <p>15 competitive offer from a competitor.</p> <p>16 So what I was suggesting here was that</p> <p>17 we get more information from Kaiser about what we</p> <p>18 would have to do to meet the competition from BMS.</p> <p>19 And if we indeed were willing to meet that</p> <p>20 competition, would they come with us.</p> <p>21 That would give us the permission, if</p> <p>22 you will, to offer Kaiser a different type of</p> | <p style="text-align: right;">168</p> <p>1 - - - - -</p> <p>2 (Thereupon, Plaintiff's</p> <p>3 Exhibit Waterer 012 was marked for</p> <p>4 purposes of identification.)</p> <p>5 - - - - -</p> <p>6 MR. GOLDENBERG: This is a one-page</p> <p>7 exhibit. It's a couple E-mails concerning</p> <p>8 Furosemide AWP. It's got a Bates number of</p> <p>9 ROXCT0051213.</p> <p>10 THE WITNESS: Okay.</p> <p>11 Q. Before we go into this, I have a general</p> <p>12 question on AWP at Roxane.</p> <p>13 With respect to setting AWP's at Roxane,</p> <p>14 is it your understanding that they were generally</p> <p>15 set by your department?</p> <p>16 A. Again, we would recommend the pricing.</p> <p>17 It would get routed and approved by management.</p> <p>18 Q. And then Roxane or someone at Roxane</p> <p>19 would then submit this AWP pricing information to</p> <p>20 the various reporting services like First Data Bank?</p> <p>21 A. Correct.</p> <p>22 THE WITNESS: Do you have a lot of</p>                                                                                                        |
| <p style="text-align: right;">167</p> <p>1 program than we offered to other customers.</p> <p>2 Q. In what class of trade was Kaiser, if</p> <p>3 you recall?</p> <p>4 A. I'm not sure which one they fell into.</p> <p>5 They're like a managed care HMO, but I don't know</p> <p>6 how we have them classified.</p> <p>7 Q. Was John Powers on any committee related</p> <p>8 to launch of CCP?</p> <p>9 A. I don't know in terms of like a</p> <p>10 committee, but as the head of contracts, he would</p> <p>11 have been involved with implementing a launch plan.</p> <p>12 He also had primary responsibility for a couple of</p> <p>13 accounts that he had a long-term relationship with.</p> <p>14 Q. Is it your understanding that one of</p> <p>15 those accounts was Kaiser?</p> <p>16 A. I wouldn't have remembered it, but it</p> <p>17 appears that way from this E-mail.</p> <p>18 Q. He says, "I discussed the AWP spread."</p> <p>19 Do you have an understanding of what</p> <p>20 that means?</p> <p>21 A. No.</p> <p>22 MR. GOLDENBERG: That's it for that.</p>                                                                              | <p style="text-align: right;">169</p> <p>1 questions on this document?</p> <p>2 Could we take a break?</p> <p>3 MR. GOLDENBERG: We can take a break.</p> <p>4 (Recess had.)</p> <p>5 MR. GOLDENBERG: This is a one-page E-</p> <p>6 mail, Bates numbered ROXCT0051213. It's a couple of</p> <p>7 E-mails, one from Judy Waterer, the other from Bob</p> <p>8 Sykora.</p> <p>9 Q. If you would take a look at Bob Sykora's</p> <p>10 E-mail dated Friday, April 14, 2000, which is the</p> <p>11 second E-mail, and subject line is Furosemide AWP,</p> <p>12 do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And Bob Sykora, in the first paragraph,</p> <p>15 he mentions that, "Anthony approached Caremark about</p> <p>16 Furosemide when he heard that they were dissatisfied</p> <p>17 with their current supplier. Janet Miller of</p> <p>18 Caremark said she would like to give us the business</p> <p>19 except now our AWP was far too low for it to be</p> <p>20 profitable for them."</p> <p>21 And then it goes on, "Anthony did some</p> <p>22 research" -- and the word "research" is missing the</p> |